BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm	Chair
Tom Burton	Commissioner
Marshall Johnson	Commissioner
Cynthia A. Kitlinski	Commissioner
Dee Knaak	Commissioner

In the Matter of the Complaint of Archie and Agnes Iveson against Northern Electric Cooperative Association

ISSUE DATE: November 21, 1994

DOCKET NO. E-130/C-93-693

ORDER GRANTING COMPLAINANTS RELIEF

PROCEDURAL HISTORY

On July 23, 1993, fifty-four customer-members of Northern Electric Cooperative Association (the Co-op) filed a formal complaint under Minn. Stat. § 216B.17, alleging that the Co-op had failed to meet its statutory responsibilities to Archie and Agnes Iveson.

On September 15, 1993, Mr. and Mrs. Iveson (the Ivesons or Complainants) filed a supplementary letter indicating that the issue in dispute was the reasonableness of a service extension fee assessed by the Co-op against the Ivesons.

On January 19, 1994, the Commission issued its ORDER INITIATING INVESTIGATION AND REQUIRING ANSWER. In that Order the Commission found that the Iveson complaint raised service standards and practice issues which merited further investigation. The Commission ordered the Co-op to file an answer to the complaint. The Co-op duly filed its answer on February 8, 1994.

On July 29, 1994, the Commission issued its ORDER CONTINUING INVESTIGATION AND REQUIRING FURTHER FILINGS. In that Order the Commission noted that the facts surrounding the Ivesons' complaint and the procedural sufficiency of the complaint itself were uncertain. The Commission therefore initiated on its own motion an investigation into the reasonableness of the service extension fee the Co-op charged to the Ivesons. The Commission ordered the Department to file a report and recommendation and the Complainants and the Co-op to file responses to the Department's report.

On September 2, 1994, the Department filed its report and recommendation.

The Co-op filed responsive comments on October 3, 1994. The Ivesons did not file comments.

The matter came before the Commission for consideration on November 3, 1994.

FINDINGS AND CONCLUSIONS

I. FACTUAL BACKGROUND

In 1984, the subject property in rural Koochiching County now owned by the Complainants was owned by predecessors in title by the name of Young. In June or July, 1984, the electrical power to the property was disconnected by the Co-op for nonpayment.

Koochiching County rebuilt the road past the property during 1985. The road reconstruction required that the power poles be either relocated and then restored, or else removed from the property altogether. The cost of either option would be shared between the County and the Co-op. The Co-op chose to have the power poles removed at a total cost of $6,132.78, rather than relocated at a total cost of $22,438. The retirement of the power lines took place during the period between February, 1985, and July, 1985, with most of the removal work taking place during April, 1985.

In choosing to remove the power lines to the property, the Co-op applied its Policy No. 410, which states:

> When a service has been idle for one year or more, and there is no evidence to indicate that it will be used again, the service will be retired at the discretion of the [Co-op].

On March 5, 1985, an attorney representing the Youngs sent a letter to the Co-op requesting that the Co-op "restore their power equipment and facilities to their former status at the conclusion of the (road) construction."

In 1987, the Ivesons bought the subject property. When the Ivesons asked the Co-op to restore electrical service to the property, the Co-op indicated that it would apply its Policy 402, which governs new service extensions. As that policy would be applied, the Ivesons would be responsible for a contribution in aid of construction of $7,185.60, after a $1,200 allowance for new construction was applied.

The Ivesons have refused to pay the service extension fee and have brought this complaint before the Commission.

II. POSITIONS OF THE PARTIES

A. The Department

The Department recommended that the Commission require the Co-op to restore power to the Iveson property without charge. The Department argued that the Co-op failed to adhere to Policy 410 in 1985, and also that Policy 410 is unreasonable.

The Department stated that the Co-op did not properly apply either part of the two-prong test for line retirement under Policy 410. First, the service was not idle for a year before the pole removal process began: service was disconnected in July, 1984, and the removal began in February, 1985. Second, the letter from the Youngs' lawyer was an indication that the service would be used again. According to the Department, the presence of structures on the land also indicated a likely demand for electricity, either by the current owners or by future owners.

The Department questioned the reasonableness of Policy 410. The Department stated that premising removal of a distribution system upon one year of idleness may be poor policy. The Department noted that seasonal customers may not use their facilities for a year or more and yet may plan to occupy the premises in the future.

B. The Co-op

The Co-op argued that the exact timing of the line removal is irrelevant--the Ivesons did not purchase the property until two years after the line retirement.

The Co-op declared that the 1985 letter from the Youngs' attorney did not indicate that the facilities would be used in the future. The letter simply showed that the owners wanted the poles replaced.

According to the Co-op, its Policy 410 governing line removal is irrelevant. The Co-op argued that the Ivesons' petition amounts to a new application for service, which is governed by Policy 402 on new extensions. No one has argued that the Co-op's service extension policy is improper--as long as it is fairly applied to the Ivesons, there are no grounds for complaint.

III. COMMISSION ACTION

The Commission agrees with the Department that the Co-op should replace the line distribution system to the Iveson property without charge to the Ivesons.

The relief requested by the Ivesons is not installation of new service but rather replacement of facilities which were removed by action of the Co-op. The Co-op's application of Policy 410 governing service removal, not Policy 402 governing installation, is at issue.

The Co-op has not shown that it properly applied its Policy 410 when it chose to remove the power distribution system to the subject property. Neither part of the two-part test in the policy was fulfilled. The service was not idle for the requisite year before removal began. The letter from the Youngs' lawyer also provided evidence that the service was likely to be used in the future. The Youngs would be unlikely to retain their lawyer to write a letter to the Co-op requesting replacement of the poles if they did not intend to use the service.

Since the Co-op did not properly apply its policy governing service retirement, the power distribution system to the subject property should not have been removed. The Co-op therefore has the duty to restore the property to the state it was in before the Co-op acted improperly. The Co-op must replace the power poles to the subject property without charge to the Complainants.

The fact that the owners of the property in 1985 were in arrears at the time the Co-op removed the distribution system is irrelevant. There is no provision in Policy 410 for removal of a distribution system for nonpayment.

The Commission finds that the public interest requires that service removal policies such as Policy 410 be properly limited in application. Where service has been extended to a property, and that service has been disrupted due to events beyond the occupants' control, it is generally good policy to require the restoration of the service to its pre-disruption state (unless the precise factors justifying removal are met). Confining service removal to cases in which the Co-op can prove the precise application of the Policy 410 factors aids the expansion and stability of electrical service in the state.

Finally, the Commission will not at this time take up the Department's concerns regarding the reasonableness of Policy 410. As the Department noted, there is no history of complaints similar to the Ivesons' which might call the reasonableness of the policy into question. If complaints of this type are filed in the future the Commission can always reexamine the policy at that time.

ORDER

1. The Commission grants the relief requested in the Ivesons' complaint. Northern Electric Cooperative Association shall restore electrical service to the Complainants' property without charge to Complainants.

2. Within 30 days of the date of this Order the Co-op shall file a letter outlining its plans for restoring electrical service to the property.

3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)